

**REPORT ON  
THE TOWN OF NEW MARKET -  
SHENANDOAH COUNTY  
VOLUNTARY SETTLEMENT  
AGREEMENT**



**Commission on Local Government**

**Department of Housing and Community Development  
Commonwealth of Virginia**

<http://www.dhcd.virginia.gov>

**May 2023**

## Table of Contents

Executive Summary .....	3
Proceedings of the Commission.....	4
The 2022 Proposed Agreement .....	4
The 2012 VSA.....	5
Characteristics of the Town and County.....	6
Scope and Standard of Review .....	8
Findings of Fact and Recommendations.....	9
Amendment 1 .....	9
Findings of Fact: Land Use Constraints.....	9
Findings of Fact: Economic and Demographic Considerations .....	11
Analysis and Recommendations.....	11
Amendment 2.....	13
Findings of Fact.....	13
Analysis and Recommendations.....	14
Amendment 3.....	15
Findings of Fact.....	15
Analysis and Recommendations.....	15
General Recommendations .....	16

## **Executive Summary**

On October 28<sup>th</sup>, 2022, the Town of New Market and Shenandoah County submitted a proposed Voluntary Settlement Agreement to the Commission on Local Government for review. This Proposed Agreement was negotiated under Section 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities enact any negotiated agreement, the Commission must review the agreement and issue an advisory report on whether the agreement is in the best interest of the Commonwealth. When issuing its advisory report, the Commission is directed “to hold hearings, make investigations, analyze local needs,” and then submit its findings of fact and recommendations to the affected local governments. The local governments may then adopt any recommendations before the agreement is sent to a special court for ultimate disposition.

The Proposed Agreement contains three substantive changes to the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County from 2012 (2012 VSA), which set forth certain requirements and processes for land use and annexation in a defined “Future Growth Area.” The first amendment (Amendment 1) changes the requirements for land use in specified portions of the Future Growth Area by substituting the current Future Land Use Map, defined as exhibit B in the 2012 VSA, with a new Future Land Use Map, defined as exhibit B-1. The second amendment (Amendment 2) creates a new process for the Parties to change those land use requirements again should they desire to in the future. The third amendment (Amendment 3) creates a new process for the parties to change the other sections of the Voluntary Settlement Agreement in the future.

The Commission finds that the Proposed Agreement generally meets its standard of review and recommends its adoption because the changes are beneficial to the orderly growth and continued viability of the Town and County. However, the Commission also suggests changes to Amendment 3 related to the process for future amendment(s) to the Proposed Agreement, and further recommends the Parties take specific actions to increase public participation and comment related to future changes to the Proposed Agreement and its potential impacts.

What follows is the Commission’s advisory report on the Proposed Agreement. First, this report will overview the proceedings before the Commission that led to this report and give further background on the 2012 VSA. Second, it will explain the characteristics of the Parties, highlighting those that are most relevant to the Commission’s review. Third, it will discuss the relevant standard of review and apply that standard to the Proposed Agreement through findings of fact and recommendations on each substantive amendment in the Proposed Agreement. Finally, it will offer general recommendations that are responsive to citizen comments and are related to the larger context surrounding the Proposed Agreement.

# Proceedings of the Commission

## The 2022 Proposed Agreement

On October 28th, 2022, the Town of New Market and Shenandoah County (the Parties) submitted, through counsel,<sup>1</sup> a proposed Voluntary Settlement Agreement (the “Proposed Agreement”) to the Commission on Local Government (the Commission) for review.<sup>2</sup> Consistent with the Commission’s regulations, the Proposed Agreement was accompanied by a supporting narrative and was sent to the political subdivisions that are contiguous to the Town and County or with which they share functions, revenues, or tax sources.<sup>3 4</sup> The Proposed Agreement contains three substantive amendments to the Second Amended VSA that is currently in effect and was negotiated under the authority of §15.2-3400 of the Code of Virginia, approved by this Commission, and adopted by the Parties in 2012 (the “2012 VSA”).<sup>5 6</sup> The first amendment (Amendment 1) changes the requirements for land use in specified portions of the Future Growth Area by substituting the current Future Land Use Map, defined as exhibit B in the 2012 VSA, with a new Future Land Use Map, defined as exhibit B-1. The second amendment (Amendment 2) creates a new process for the Parties to change those land use requirements again should they desire to in the future. The third amendment (Amendment 3) creates a new process for the parties to change the other sections of the Voluntary Settlement Agreement in the future.

In conjunction with its review of the Proposed Agreement, on March 9th, 2023, the Commission heard oral presentations from the Parties in support of the Proposed Agreement at the Town’s Municipal Offices in New Market, VA.<sup>7</sup> The Commission also held a public hearing, advertised in accordance with §15.2-2907(B) of the Code of Virginia, in the evening on March 9th, 2023, at the Town’s Municipal

---

<sup>1</sup> Both the Town and the County were represented by Litten & Sipe, L.L.P., in the drafting of the Proposed Agreement and oral presentations and have properly waived all conflicts.

<sup>2</sup> Town of New Market and Shenandoah County, Notice of the County of Shenandoah, Virginia, and the Town of New Market, Virginia, of their Intention to Petition for the Approval of an Amendment to the Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County, October 26<sup>th</sup>, 2022. The Parties’ Amendment Notice contains: 1) A narrative cover letter supporting the Proposed Agreement and a list of local governments notified; 2) the Joint Resolution of the Parties requesting Commission Review of the Proposed Amendments to the Second Amended Voluntary Settlement Agreement; 3) the Second Amended Voluntary Settlement Agreement between the Town of New Market and Shenandoah County (henceforth referred to as the “2012 VSA”); 4) the proposed amendments to the Second Amended Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County (henceforth referred to as the “Proposed Agreement”); and 5) correspondence between the Parties’ legal representation and Commission staff regarding the Proposed Agreement. The submissions from the Parties and other materials are available in the official public record of this case, which was produced in accordance with 1VAC 50-20-640, is attached to this report, and is hereinafter referred to as Appendix A.

<sup>3</sup> The text of the Proposed Agreement can be found on page 33 of Appendix A.

<sup>4</sup> Appendix A, Section 1A [Parties’ Notice], pages 8-10.

<sup>5</sup> The text of the 2012 VSA can be found on page 16 of Appendix A.

<sup>6</sup> This chapter as a whole governs the scope and creation of voluntary settlement agreements.

<sup>7</sup> Audio/visual recordings of the oral presentations and the public hearing can be found on the Commission’s webpage under “CLG Minutes;” <https://www.dhcd.virginia.gov/commission-local-government-clg>

Offices for the purpose of receiving citizen comment.<sup>8</sup> The public hearing was attended by approximately twenty-five people and produced testimony from fourteen individuals. To permit receipt of additional public comment, the Commission agreed to keep its record open for written submissions through 5:00 pm on March 23rd, 2023.<sup>9</sup>

The Commission is obligated to render a report with its findings of fact and recommendations within six months of receiving notice of a voluntary settlement agreement but may extend that deadline by no more than 60 days.<sup>10</sup> The Commission extended the six-month deadline by 7 days to May 5th, 2023, to correspond with its May regular meeting. This report was adopted at the May regular meeting and sent to the Parties for their consideration.<sup>11</sup> The Proposed Agreement (either in original or modified form) shall not become binding on the Town or County until it has been adopted by ordinance by both Parties after a public hearing and subsequently affirmed by a special court.<sup>12</sup>

### The 2012 VSA

As indicated to the Commission in oral presentations and public comments, the Parties began discussing the Town's growth plan as early as 2007.<sup>13</sup> These discussions led to the 2012 VSA, which was reviewed by the Commission in the Spring of 2010.<sup>14</sup> The final 2012 VSA set forth certain requirements and processes for land use and annexation in a defined "Future Growth Area." Specifically, it provides for the following:

- The establishment of an area of 1918 acres in Shenandoah County as a Future Growth Area;
- A process for the Town to incrementally annex the Future Growth Area once various conditions have been met;
- The allowable uses for land in the Future Growth Area;
- A grant of immunity for the County from Town annexation except for areas in the Future Growth Area and/or by mutual agreement of the Parties for 20 years;
- A process for how cash payments to the Town for new development in annexed area in the Future Growth Area are to be paid to the County;

---

<sup>8</sup> Minutes of the public hearing can be found under Section 3(A), page 64 of Appendix A.

<sup>9</sup> Additional comments received by the Commission can be found under Section 3(B-C) and Section 4, pages 68-86 of Appendix A.

<sup>10</sup> Va. Code Ann. § 15.2-3400; 15.2-2907(A) (2023).

<sup>11</sup> Commission on Local Government (2023). 'Report on the Voluntary Settlement Agreement Between the Town of New Market and Shenandoah County,' *Regular Meeting of the Commission, May 4, 2023*. All Virtual Public Meeting.

<sup>12</sup> Va. Code Ann. § 15.2-3400(4) (2023).

<sup>13</sup> Appendix A, Section 4, [Letter from Josh Stephens], page 72.

<sup>14</sup> Commission on Local Government, Report on the Town of New Market-Shenandoah County Voluntary Settlement Agreement, July 2010; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/town-of-new-market-county-of-shenandoah-voluntary-settlement-agreement-july-2010.pdf>.

- A dispute resolution process for any disputes that arise over the VSA, and;
- The length of the agreement between the Town and County.

As stated by the Parties in their oral testimonies, the 2012 VSA arose from concerns over managing growth in the Town at a time when new development in the area was accelerating.<sup>15</sup> The Future Growth Area and its land use designations were designed to meet the current needs of the Parties and to allow for further coordination in their respective Comprehensive Plans.<sup>16</sup> However, during the ten years since the 2012 VSA was adopted, the Town has not annexed any land in the Future Growth Area, and there has been no additional development in the Future Growth Area.<sup>17</sup>

## **Characteristics of the Town and County**

Shenandoah County was formed on May 15, 1772. Located in the northwest region of Virginia, the County was known as Dunmore County until 1778 when its name was changed during the American Revolution.<sup>18</sup> The County is adjacent to Frederick, Page, Rockingham, and Warren Counties. It also contains six incorporated towns, including the Town of New Market, formed on December 14, 1796.<sup>19</sup> The Town of New Market and Shenandoah County are located in the Growth and Opportunity Virginia Region #8, which is characterized by a lower population density and a focus on growing targeted industries of Financial and Business Services, Light Manufacturing, Healthcare, IT and Communications, Transportation and Logistics, Value-added Food-related Manufacturing, and Biomedical/Biotechnical fields.<sup>20</sup>

Despite their long history, the County and Town are experiencing greater economic challenges than much of the rest of the state. Furthermore, these challenges are substantially more pronounced in the Town than the County. For example, the median household incomes for both the County and Town are substantially less than the statewide median of \$80,600, with the median household in the County earning approximately \$58,600 a year, and the median household in the Town earning only \$42,700 (see Table 1). This means that in general, citizens of the Town, and to a lesser extent the County, have fewer resources to meet their economic needs. These limited resources also impact the Parties, as lower median household incomes equate to a smaller tax base from which the Parties may collect revenues.

Additionally, both the County and the Town demonstrate signs of aging populations and other concerning trends. The median age for County residents is 44.2 years old, compared to the statewide

---

<sup>15</sup> Appendix A, Section 2C [Slide 10], page 49.

<sup>16</sup> Appendix A, Section 2C [Slide 6], page 48.

<sup>17</sup> Appendix A, Section 1A [Parties' Notice], page 5.

<sup>18</sup> Shenandoah County, Historical Timeline, (2022); <https://sc250.org/>

<sup>19</sup> New Market, History, (2023); <https://www.newmarketvirginia.com/explore/page/history>

<sup>20</sup> Virginia Department of Housing and Community Development, Region 8 Information, (2023); <https://govirginia.org/regions/eight/>

median of 38.5. The median age of Town residents is even greater at 50.6 years. Similarly, the share of children living in the County or Town is less than the statewide share: 21.4% of the County's residents are younger than 18, compared to 22.1% of Virginians. The share of the Town's population is even lower, where children comprise only 13.5% of the Town's population. Finally, both the County and Town have experienced slower population growth rates than the State. The County's population grew only 3.9% from 2011 – 2020, compared to the State population growth of 7.4%. The Town's population declined over this same period by 3.5%. These indicators - aging and slowly growing or declining populations - represent signs of fiscal stress for the Parties. The population growth trends indicate a decreasing tax base from which to provide services. The aging populations further compound this stress on the Parties, as aging populations generally correlate with declines in labor forces, incomes, and overall economic activity.

<b>Table 1: Selected Demographic and Economic Characteristics of Parties</b>			
<b>Population Characteristic (Margin of Error)*</b>	<b>Town of New Market</b>	<b>Shenandoah County</b>	<b>Virginia</b>
Total population	2,281 (± 431)	44,037	8,582,479
Median age (years)	50.6 (± 13.8)	44.2 (± 0.7)	38.5 (± 0.1)
Percentage of Population < 18 years	13.5% (± 4.4%)	21.4% (± 0.2%)	22.1% (± 0.1%)
Population Change 2011 – 2020 (Percent)	-3.5%	3.9%	7.4%
Median Household Income	\$42,727 (± \$4,112)	\$58,609 (± \$3,681)	\$80,651 (± \$377)
Source for Shenandoah County: <a href="#">American Community Survey 5 Year Estimates, 2021, DP05</a>			
Source for Town of New Market: <a href="#">American Community Survey 5 Year Estimates, 2021, S1903</a>			
Source for Virginia: <a href="#">American Community Survey 5 Year Estimates, 2021, DP05</a>			
*Margins of error are provided when available for certain sample estimates.			

When considered together, the statistics in Table 1 support the testimony that the Parties are facing economic stressors in their jurisdictions.<sup>21</sup> However, in every instance the Town appears to face greater stress than the County (especially in terms of their demographic changes), with each indicator pointing to an overall lack of growth in the Town over the past decade.

<sup>21</sup> Appendix A, Section 2(C) [slide 7], page 52.

## Scope and Standard of Review

The Proposed Agreement was negotiated under Section 15.2-3400 of the Code of Virginia, which allows localities to settle interlocal issues through negotiated agreements. However, before localities enact any negotiated agreement, the Commission must review the negotiated agreement and issue an advisory report on “whether the proposed settlement is in the best interest of the Commonwealth.”<sup>22</sup> When issuing its advisory report, the Commission is directed “to hold hearings, make investigations, analyze local needs,” and then submit its findings of fact and recommendations to the affected local governments.<sup>23</sup> The local governments may then adopt any recommendations before the agreement is sent to a special court for ultimate disposition.<sup>24</sup> The Commission’s report shall be admissible as evidence in any court proceedings on the agreement, but it shall not be binding upon any court and shall be advisory in nature only.<sup>25</sup>

As noted in previous Commission reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlement of their interlocal concerns. One of the statutory responsibilities of the Commission is to assist local governments in such efforts.<sup>26</sup> In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as the Proposed Agreement being considered, should be approached with respect and presumption of their compatibility with applicable statutory standards. The Commission notes, however, that the General Assembly requires interlocal agreements to be reviewed by this body prior to their final adoption by the local governing bodies and review by a court.<sup>27</sup> The Commission is obliged to conclude, therefore, that while interlocal agreements are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render the Commission’s review a *pro forma* endorsement of any proposed settlement. The Commission’s responsibility to the Commonwealth and to the affected localities requires more.

Therefore, in determining the specific application of the “best interest of the Commonwealth” standard of review, the Commission considers whether the agreement will i) be beneficial to the orderly growth and continued viability of the localities, and ii) whether the agreement will promote strong and viable units of government in the Commonwealth. The first question is derived from the purpose of voluntary settlement agreements in general as provided in the Code of Virginia. Section 15.2-3400 states that localities should be allowed to settle certain issues because “a resolution [by voluntary agreement]

---

<sup>22</sup> Va. Code Ann. § 15.2-3400(3) (2023).

<sup>23</sup> Va. Code Ann. § 15.2-3400(3) (2023); 15.2-2907(A) (2023).

<sup>24</sup> Va. Code Ann. § 15.2-3400(3) (2023).

<sup>25</sup> Va. Code Ann. § 15.2-2904(B) (2023); 15.2-3400 (2023).

<sup>26</sup> Va. Code Ann. § 15.2-2903(3) (2023).

<sup>27</sup> Va. Code Ann. § 15.2-3400(3) (2023).

can be *beneficial to the orderly growth and continued viability* of the localities of the Commonwealth,” (emphasis added). Furthermore, a court reviewing these agreements must consider “whether the interest of the Commonwealth in promoting *orderly growth and the continued viability* of localities has been met,”<sup>28</sup> (emphasis added). The best interest of the Commonwealth is that the Code of Virginia be given full force, both in letter and in spirit. Therefore, the Commission finds it necessary to consider whether the Proposed Agreement will be beneficial to the orderly growth and continued viability of the Town of New Market and Shenandoah County as envisioned by §15.2-3400.

The second question is derived from the purpose of the 2012 VSA. A key component of that agreement is the modification of specific annexation rights. The County has relinquished its ability to challenge an annexation by the Town, and the Town has relinquished its statutory right to annex land unless the Town follows the processes laid out in the 2012 VSA and various prerequisite conditions are met. Given that annexation rights are central to the 2012 VSA, the best interest of the Commonwealth standard, as applied to the Proposed Agreement, should draw from the contested annexation standards as well.<sup>29</sup> When considering a contested annexation, the Commission looks at “the best interests of the Commonwealth *in promoting strong and viable units of government*,” (emphasis added).<sup>30</sup> Therefore, the Commission will specifically evaluate whether the Proposed Agreement will promote strong and viable units of government as the Commission considers the best interest of the Commonwealth more broadly.

## **Findings of Fact and Recommendations**

The Proposed Agreement contains the three substantive amendments that the Commission must review under the “best interest of the Commonwealth” standard by providing its findings of fact and recommendations for each. Additionally, general recommendations that are responsive to citizen comments and are related to the larger context surrounding the Proposed Agreement are provided in the General Recommendations subsection.

### **Amendment 1: Amend Section 3.1 of the 2012 Voluntary Settlement Agreement to replace Exhibit B with Exhibit B-1.**

#### ***Findings of Fact: Land Use Constraints***

Exhibit B in the 2012 VSA is the “Future Land Use Map” of the Town and County showing the Future Growth Area.<sup>31</sup> Each section of the Future Growth Area is labeled with a description of the broad types of land uses that would be allowed if the Town were to annex that land in accordance with the 2012

---

<sup>28</sup> Va. Code Ann. § 15.2-3400(5) (2023).

<sup>29</sup> Va. Code Ann. § 15.2-2907 (2023).

<sup>30</sup> Va. Code Ann. § 15.2-3209 (2023).

<sup>31</sup> Appendix A, Section 1C [2012 VSA, Exhibit B], page 32.

VSA.<sup>32</sup> Amendment 1 in the Proposed Agreement substitutes a new Future Land Use Map, exhibit B-1,<sup>33</sup> which changes the descriptions of two portions of the Future Growth Area to the South and Southeast of the Town. Substituting Exhibit B for Exhibit B-1 will change the description attached to two portions of the Future Growth Area from “Res Low Cluster-Conservation” to “HOUSES/ TOWNHOUSES/ PUD” which will give the Town more flexibility to zone land in the Future Growth Area after it annexes the land under the Proposed Agreement.<sup>34</sup>

Exhibit B-1 does not change the zoning classifications of these portions of the Future Growth Area. Instead, Section 3.2 of the 2012 VSA requires that any annexed land will be annexed under the “Transitional X District” to avoid having un-zoned land in the Town.<sup>35</sup> The transitional district allows for a limited number of land uses by right with a minimum lot size of 5 acres.<sup>36</sup> Once the land has been annexed, the Town shall follow the normal zoning ordinance procedures to “classify all parcels so annexed to Town zoning districts that substantially conform to” the descriptions on the Future Land Use Map.<sup>37</sup> This process is governed by the Virginia Code and requires public hearings and other forms of engagement.<sup>38</sup>

The Commission finds that substituting Exhibit B-1 for Exhibit B is distinct from any rezoning process; the substitution only allows for the Town to begin exploring alternative land uses for land that might be annexed from the Future Growth Area and does not circumvent or abbreviate any review process or public engagement required by §15.2-2204. Because the Town has separate authority under statute and the 2012 VSA to rezone property after it is annexed, the substantive question before the Commission when considering Amendment 1 is whether it is in the best interest of the Commonwealth to allow the Parties to substitute a new Future Land Use Map such that the Town has the flexibility to consider a wider variety of residential densities in the targeted areas after it has annexed the land.

---

<sup>32</sup> These descriptions are not specific zoning designations. The parties indicated that there may be several possible Town zoning designations available for each section of the Future Growth Area once it is annexed (See Appendix A, Section 5 [Further Information from the Parties], page 87). Currently, the annexation process for land use in the Future Growth Area is governed by Section 3 of the 2012 VSA and the Future Land Use Map. Section 3.3 states that the Town may only zone annexed land to a classification that substantially conforms to the description on the Future Land Use Map. When applied to the Town’s zoning ordinances, this means that, currently, land in the subject area may only be zoned for a maximum density of one home per two acres (See Appendix A, Section 2(C) [slide 17], page 59).

<sup>33</sup> See Appendix A, Section 1D [Proposed Agreement, Exhibit B-1], page 35.

<sup>34</sup> See Appendix A, Section 1D [Proposed Agreement, Exhibit B-1], page 35.

<sup>35</sup> Appendix A, Section 5 [Further Information from the Parties], page 87.

<sup>36</sup> Appendix A, Section 6A [New Market, Va., Zoning Ordinance Art. X-A (2023)], pages 89 - 91.

<sup>37</sup> Appendix A, Section 1C [2012 VSA, Section 3.3], page 21; Appendix A, Section 5 [Further Information from the Parties], page 87.

<sup>38</sup> Va. Code Ann. § 15.2-2204 (2023).

### *Findings of Fact: Economic and Demographic Considerations*

Testimony from the Parties' oral presentations, public comment, and data analysis demonstrates the Town has experienced population and economic decline over the past decade. As indicated earlier in this report, the Town, and to a lesser extent the County, have experienced significant economic challenges as borne out by various data sources; the high median age of the Town (50.6 years old) and the low median household income (~\$42,000) are particularly striking indications of these challenges. The Commission also notes more tangible indications of the economic challenges facing the Town; for example, the Town's Chamber of Commerce was closed in 2023 due to a lack of available local volunteers in addition to a general loss of business in the Town.<sup>39</sup>

The Parties also indicated in their oral presentations that the loss of businesses and population decline have been an effect of a lack of new residential "rooftops" in the Town.<sup>40</sup> Although the Town experienced significant development prior to the Great Recession in 2008, new housing construction dramatically decreased after that point as macroeconomic factors caused housing prices to decline and limit the start of any new construction.<sup>41</sup> To that end, the Town went from constructing an average of 12 homes per year from 1992-2009 to less than 2 homes per year from 2009 – 2023.<sup>42</sup>

The lack of housing development has been exacerbated by limited land available for development. While part of this is due to conservation easements obtained by the Shenandoah Battlefield Association,<sup>43</sup> the Commission heard that the limit on housing density in the Future Growth Area imposed by the 2012 VSA has made the area unattractive for new construction. At the public hearing, the Commission heard directly from one landowner in the Future Growth Area that the lack of flexibility for zoning has made new construction economically infeasible.<sup>44</sup> Furthermore, several citizens shared their personal challenges with finding housing in the Town and the surrounding portions of the County at the public hearing.<sup>45</sup>

### *Analysis and Recommendations*

According to the Commission's standard of review, the substitution of Exhibit B-1 for Exhibit B must be in the best interest of the Commonwealth in order for the Commission to recommend Amendment 1. It must therefore i) be beneficial to the orderly growth and continued viability of the Town and County, and ii) promote strong and viable units of government in the Commonwealth.

---

<sup>39</sup> Appendix A, Section 2C [slide 10], page 52.

<sup>40</sup> Appendix A, Section 2C [slide 6], page 48.

<sup>41</sup> Appendix A, Section 2C [slide 9-10], pages 51-52.

<sup>42</sup> Appendix A, Section 2C [Slide 9], page 51.

<sup>43</sup> Appendix A, Section 2C [Slide 12-14], pages 54 - 56.

<sup>44</sup> Appendix A, Section 3A [Public Hearing Minutes, Testimony of Jody Greber], page 66.

<sup>45</sup> Appendix A, Section 3A [Public Hearing Minutes, Testimony of Chris Rinker and Jeff Mongold], page 66.

Regarding the orderly growth and continued viability of the localities, the Commission found that the consequences of the decision to limit density in the Future Growth Area in 2012 have led to a lack of development, which has contributed to the limited economic growth in the Town. These limitations therefore threaten the long-term financial health of the Town. With respect to orderly growth, substituting Exhibit B-1 for Exhibit B does not satisfy or replace any requirements under §15.2-2204 that would be necessary to change land uses; rather, it only allows for a greater range of potential land use densities in a limited area following Town annexation. As such, Amendment 1, which has been agreed to by both Parties, is beneficial to the orderly growth of the localities because it increases flexibility to achieve mutually agreeable growth while not removing any required processes for citizen engagement or planning around zoning decisions.

Furthermore, Amendment 1 is likely needed to promote the strength and viability of the Town and County in the foreseeable future. As stated above, the 2012 VSA was negotiated and agreed to in a different economic climate than what the Town and County are currently experiencing. At that time, it contained reasonable restraints that would manage growth in the area. Since then, the Commission finds that the Town and County have experienced the opposite challenge, namely a decline in economic and business activity in the area driven by an aging population and lack of housing, specifically in the Town and surrounding areas of the County. The Commission notes that this lack of growth will ultimately limit the continued viability of the localities (particularly the Town, as demonstrated in the Characteristics section). By substituting Exhibit B-1 for Exhibit B, the Town, with the consent of the County, will be granted greater flexibility to determine the appropriate land use in the Future Growth Area and therefore promote its the growth and fiscal health.

The Commission finds that Amendment 1 in the Proposed Agreement is in the best interest of the Commonwealth and recommends it be adopted as proposed.

Amendment 2: Amend Section 3.4(a) of the 2012 Voluntary Settlement Agreement to add the italicized text below, so that it states as follows: The Town and the County agree that the obligations imposed on the Town Council with respect to zoning and rezoning matters as reflected in Subsections 3.1, 3.2, and 3.3 shall remain in effect and the Town Council will specifically comply with such Subsections, *unless otherwise agreed to by the governing bodies of the Town and County after following the procedure set forth in Virginia Code § 15.2-2204(A)*, until such time as 75% of the original undeveloped acreage in the Future Growth Area has developed.

### *Findings of Fact*

In addition to amending the Future Land Use Map, the Parties wish to adopt Amendment 2, which will allow for future amendments to the map and related portions of the 2012 VSA by mutual agreement after the processes set forth in 15.2-2204(A). Under the current arrangement, any amendments to the 2012 VSA require hearings, Commission review, and court approval before they can be adopted.<sup>46</sup> Testimony from the Parties during their oral presentations indicated that Commission review increases the complexity of making mutually agreeable land use changes in the Future Growth Area. The Parties noted that land use decisions are typically made at the local level (either between or within localities), and the Commission's review in this instance was only necessary because these restrictions were placed in an unamendable VSA.<sup>47</sup> Amendment 2 in the Proposed Agreement seeks to remedy this situation.

The ability to amend by joint agreement after a public hearing would give the localities greater flexibility to determine the Future Growth Area's future land uses. This flexibility to amend part of a VSA is not unprecedented. At least thirty-eight Commission-approved voluntary settlement agreements have an amendment provision of some sort, and twenty-seven of those only require mutual agreement of the parties with no further process or involvement from the Commission or the courts.<sup>48</sup> Furthermore, at least one voluntary settlement agreement between the City of Manassas Park and Prince William County has been amended by mutual agreement of the parties without Commission involvement.<sup>49</sup> With respect

---

<sup>46</sup> Section 7.2 of the 2012 VSA allowed for amendments only before the VSA went into effect. See Appendix A, Section 1C [2012 VSA, Section 7.2], page 26. While this question of law has not been decided by a court, the Commission, after consultation with its own counsel, assumes, without deciding or establishing any precedent, that amendments to a voluntary settlement agreement that does not contain an amendment provision must be treated as an entirely new voluntary settlement agreement. Creating a new agreement necessitates following the same procedures that were required to create the first agreement, namely, those required by Va. Code 15.2-3400 et seq.

<sup>47</sup> Appendix A, Section 2C [slide 2], page 44.

<sup>48</sup> A review of amendment provisions in a sample of previous Voluntary Settlement Agreements approved by the Commission that were readily searchable electronically is on page 98 of Appendix A.

<sup>49</sup> See In re Voluntary Settlement of Annexation and Immunity Agreement, 2000 Va. Cir. 168, 169 (2000) (also on page 92 in Appendix A).

to amending land use restrictions specifically, the 2005 Voluntary Settlement Agreement between the Town of Stephens City and Frederick County allows the future land use plan (similar to the maps at issue here) to be amended by simple joint agreement of the Town and County.

### *Analysis and Recommendations*

Again, the Commission is tasked with determining whether Amendment 2 in the Proposed Agreement would i) be beneficial to the orderly growth and continued viability of the Town and County, and ii) promote strong and viable units of government in the Commonwealth. Localities are not required by Virginia Code to come before the Commission for review of any land use changes, and yet the 2012 VSA has put this requirement on the Town of New Market and Shenandoah County. The Parties, in full cooperation with one another, are seeking to remove this requirement for Commission review and replace it with the typical process for ordinance changes outlined in 15.2-2204(A). The ample historical record of similar and often less demanding amendment provisions within voluntary settlement agreements indicates that the provisions of Amendment 2 are common and reasonable.

As with Amendment 1 analyzed above, any further changes made to the Future Land Use Map will be a separate procedure from the requirements under §15.2204(A) relating to zoning changes. Any rezoning in the Future Growth Area subsequent to an annexation will have to follow the zoning process, including periods of public comment and public notice. The amendment recommended here only allows for the Parties to undergo the process to potentially change land use decisions in the defined Future Growth Area without further Commission approval. It in no way circumvents or abbreviates the zoning and rezoning process.

In the same way that Exhibit B created unintended consequences for the Parties that led to Amendment 1, the inability to amend land use in the Future Growth Area may, in the future, create further unintended consequences for the Parties that would limit the future viability of these localities, most notably the Town. In order to promote their own orderly growth and continued viability, the Parties require flexibility to work together to achieve a land use and annexation process that will ensure their continued strength. Therefore, the Commission finds that amendment provisions that give power to the localities to determine local issues with reasonable guard rails such as mutual agreement after a public hearing are in the best interest of the Commonwealth. Accordingly, the Commission recommends the adoption of Amendment 2 in the Proposed Agreement to allow for the Parties, by joint agreement after a public hearing, to amend the land uses allowed within the Future Growth Area without needing to follow the additional requirements in §15.2-3400.

Amendment 3: Amend Section 7.2 of the 2012 Voluntary Settlement Agreement to read as follows: This Agreement may be amended by mutual agreement of the Town and the County after following the procedure set forth in Virginia Code § 15.2-2204(A). Any modifications to Exhibit B-1 should note the projected density at build out under the existing plan and the proposed modified plan.

#### *Findings of Fact*

In addition to being able to amend the Future Land Use Map and related provisions of the 2012 VSA, Amendment 3 in the Proposed Agreement, which amends Section 7.2 of the 2012 VSA, would allow the Parties to amend any other portion of the 2012 VSA by mutual agreement after a public hearing. As indicated above, there is historical precedent from the Commission to allow voluntary settlement agreements to be amended without further involvement from the Commission. Because the relevant findings of fact for these provisions are substantively identical, no further findings are necessary for the analysis of Amendment 3.

#### *Analysis and Recommendations*

The Commission recommends the Parties make further changes to Amendment 3 to clarify that the basic character of the 2012 VSA cannot be changed without further involvement of the Commission and courts. While the substance of Amendment 3 in the Proposed Agreement is the same as Amendment 2, the scale is much broader. The provisions of Amendment 2 are constrained to land use in the future growth area, which the Commission believes is a local matter that should be left to the Parties. Amendment 3, on the other hand, would potentially allow the Parties to address issues outside the scope of the 2012 VSA or make a whole new agreement by mutual consent and a public hearing, thus circumventing the need for Commission review and court approval in perpetuity.

The Commission has addressed this issue previously. In a 1999 voluntary settlement agreement between the Town of Franklin and Southampton County, the two localities included a provision stating that some sections would require both Commission and court approval to amend, while others would require only mutual consent. The Commission addressed this issue in its report, stating, in relevant part:

“The exclusion of changes [to specified provisions] from the review process prescribed by Section 15.2-3400 of the Code of Virginia rests, we assume, upon the judgment of the parties that no modifications to those sections would significantly impact the other long-term provisions of the current agreement which clearly require judicial sanction. While this Commission considers it desirable for jurisdictions to have the ability to modify elements of their interlocal agreements in an expeditious manner in recognition of changing needs and circumstances, and while we consider the distinction in the amendment process prescribed by [the amendment provisions] of

the current agreement as being reasonable, we are obliged to state that our recommendation to the court rests solely upon the current substantive provisions of the instrument and not upon consideration of prospective changes.”<sup>50</sup>

The Commission did not recommend any changes to the Town of Franklin and Southampton County’s voluntary settlement agreement. However, given the circumstances that gave rise to the review of this Proposed Agreement (namely that the Parties realized in 2022 that the 2012 VSA did not have any amendment provisions and have expressly stated that they wish to avoid Commission review because it is time-consuming), the logic of our previous precedents requires more in this circumstance. Therefore, the Commission recommends the Parties add language specifying that future amendments to the 2012 VSA must be relevant and germane to the substance of the original agreement. Such substance includes, but is not limited to, the creation of the Future Growth Area by the Town and County and the processes by which the Town may annex land in that area. While the Commission believes it is in the best interest of the Commonwealth to allow the Parties the flexibility to modify the Proposed Agreement and finds Amendment 3 reasonable in concept, modification of the 2012 VSA beyond its original scope would allow for a potential circumvention of Commission and court review and would not be in the best interest of the Commonwealth because it would be contrary to the intent of Section 15.2-3400 of the Code of Virginia.

### General Recommendations

In addition to the recommendations related to the Proposed Agreement, the Commission heard concern from citizens of the Town and County through oral and written public comment about the consequences of development in the proposed Future Growth Area.<sup>51</sup> As stated in the proceedings of this case, the Commission’s role is to review the Proposed Agreement, which only contains amendments to the 2012 VSA between the Town and County, and make recommendations on whether the Proposed Agreement is in the best interest of the Commonwealth. These proceedings do not comment or judge the merits of certain zoning decisions, as the Commission believes those processes are best left to the local governments. The Commission believes that comments on the impacts of these zoning decisions should be made during the zoning process, rather than the Commission’s review of interlocal agreements.

However, the Commission believes that central to the orderly growth and viability of any locality is its responsiveness to citizen concerns and the prioritization of their wellbeing during decision-making. As such, the Commission does acknowledge citizen concerns about the potential impact of development

---

<sup>50</sup> Commission on Local Government, Report on the City of Franklin-County of Southampton Revenue-Sharing Agreement, 32, January 1999; <https://www.dhcd.virginia.gov/sites/default/files/Docx/clg/voluntary-settlement-agreement/city-of-franklin-county-of-southampton-revenue-sharing-agreement-february-1999.pdf>.

<sup>51</sup> All public comments received as well as minutes from the public hearing can be found in Appendix A in Sections 3A-C and Section 4., beginning on page 64.

received through public comment and the public hearing. To that end, the Commission recommends the Town and County work diligently to promote awareness and to invite public comment on any changes to land use, including any future changes to Exhibit B-1, the Proposed Agreement, and/or zoning changes within the Future Growth Area. This includes not only following the prescribed notification periods in §15.2204(A), but also proactive outreach to the community through additional means (such as through mail flyers, newspaper ads, emails, etc.). Furthermore, the Commission also strongly recommends the Parties work together to directly notify the individual property owners who may be impacted by changes to future land uses and annexation processes that are accomplished through changes to the Proposed Agreement.

Finally, the Commission recommends that if any new development is formally proposed during or before the necessary rezoning process that is required after an annexation, that the Parties endeavor to thoroughly consider any impacts to residents above and beyond what may be required by law. This may include the need to perform studies to gauge the impact of the proposed development on the area, particularly related to impacts on transportation (traffic, roads, etc.) and the demands on the Town's water and sewer systems.